

### **REMARKS**

This amendment is responsive to the Office Action dated September 9, 2004. Upon entry of the amendment, claims 1-23 will remain pending in the present application. Claims 1-2, 7-10, 14-16, 20 and 23 have been amended.

The independent claims have been amended to replace the reference to plants of the *Ranunculaceae* family, with a specific list of plants taken from page 2, line 27 to page 3, line 19 of the specification as originally filed. Dependent claims have been amended to delete references to the *Ranunculaceae* family, since the reference in the independent claims was deleted, and to correct a minor typographical error in claim 7. In view of the foregoing amendments and the following remarks, reconsideration of the present patent application is respectfully requested

### **Experimental Evidence**

Enclosed herewith is a declaration of the inventor, Deborah O'Neil, detailing two studies that were conducted at her direction in relation to the above-identified invention. Study 1 demonstrates that various *Ranunculus* extracts (i.e. extracts of a plant of the genus *Ranunculus*) exhibit anti-microbial activity. Study 2 demonstrates that certain *Ranunculus* extracts have desirable properties when it comes to resistance development of certain microorganisms treated with such *Ranunculus* extracts.

### **Rejections under 35 U.S.C. § 103(a)**

Claims 1-22 have been rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent No. 6,248,343 issued to Jampani et al. (hereinafter "Jampani et al.") in view of U.S. Patent No. 4,459,285 issued to Grollier et al. (hereinafter "Grollier et al."). In particular, the Examiner stated that

Jampani et al. disclose a therapeutic antimicrobial composition comprising (0.1 to 10% by weight of Hydrastis Canadensis (col. 2, line 54 and claim 5); essential oils such as Australian Tea oil in an amount from 1.0 to 5.0% (col. 8, line 4); and surfactants such as anionic, nonionic and cationic (col. 8, lines 26-34). See example 9 and claims.

Jampani et al. teach all of the instantly required except applicants specific anionic soap component.

Grollier et al. teach a cosmetic composition for skin and hair comprising flowers or flower tops such as buttercup from the *Ranunculus*

family (col. 3, line 24); essential oils (col. 4, lines 24-28); and surfactants such as anionic surfactant including soap (col. 4, lines 45-50).

It would have been obvious to one of ordinary skill in the art to include the specific anionic soap of Grollier et al. to the compositions of Jampani et al. because Jampani et al. invite the inclusion of anionic surfactants and Grollier et al. teach that soaps are anionic surfactants used in skin treatment compositions. Accordingly, one of ordinary skill in the art, in the absence of a showing to the contrary, would have been motivated to include the soap because only synergistic results would have been obtained.

See pages 2 and 3 of the Office Action. Applicant respectfully traverses this rejection, at least insofar as it applies to claims 1-22, as amended, for the reasons set forth below.

Applicant respectfully submits that claims 1-22, as amended, are not obvious over Jampani et al. in view of Grollier et al. because a combination of Jampani et al. and Grollier et al. does not set forth every limitation of the Applicant's claimed invention. Therefore, applicant respectfully submits that the Official Action does not set forth a *prima facie* case of obviousness in support of the rejection under 35 U.S.C. § 103(a).

According to M.P.E.P. § 2143,

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.

The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure. [*Citation omitted*]

Jampani et al. teaches an anti-microbial composition which may include extracts from *Curcuma longa*, *Hydrastis canadensis* and *Crocus sativa*. (See Jampani et al. column 3, lines 39-40, and column 4, lines 30-34. However, Jampani et al. does not teach or suggest the use of extracts from any the specific plants now required by claims

1-22, as amended. Grollier et al. does not cure the deficiency of Jampani et al. since Grollier et al. teaches a cosmetic composition comprising particles of pulverized flowers or flower tops and does not teach or suggest the use of an extract of any of the specific plants now required by claims 1-22, as amended. (See e.g. col. 1, lines 9-11 of Grollier et al.). Accordingly, Applicant respectfully requests that the rejection under 35 U.S.C. § 103(a) be withdrawn upon reconsideration since at least one element of the invention, as claimed in amended claims 1-22, is not found in either of the cited references and therefore the cited references do not make out a case of *prima facie* obviousness.

Moreover, a skilled person reviewing the teachings of Jampani et al. to use *Hydrastis Canadensis* in an anti-microbial composition, would have no motivation to substitute a plant of the genus *Ranunculus*, for the anti-microbial plant or plant extract of the Jampani et al. composition based on the teachings of Grollier et al., since Grollier et al. does not teach or suggest that plants of the genus *Ranunculus* have anti-microbial properties. Finally, even if a skilled person were to substitute a plant of the genus *Ranunculus* from Grollier et al. into the composition of Jampani et al., the teachings of Grollier et al. that it is critical to provide the plant in the form of a finely ground flower or flower top to obtain the desired properties (see col. 1, lines 25-47 of Grollier et al.) would motivate a skilled person not to employ an extract, as claimed in claims 1-22. Thus the skilled person would also not arrive at the present invention for this additional reason.

Accordingly, the rejection of claims 1-23, as amended, under 35 U.S.C. 103(a) over a combination of Jampani et al. and Grollier et al., should be withdrawn for these additional reasons.

Claims 1-5 and 7-22 were rejected under 35 U.S.C. §103(a) as being unpatentable over Jampani et al. Specifically, the Examiner stated:

Jampani et al. disclose a therapeutic antimicrobial composition comprising (0.1 to 10% by weight of *Hydrastis Canadensis* (col. 2, line 54 and claim 5); essential oils such as Australian Tea oil in an amount from 1.0 to 5.0% (col. 8, line 4); and surfactants such as anionic, nonionic and cationic (col. 8, lines 26-34). See Example 9 and claims.

Jampani et al. lack an example that specifically teaches each of the claimed components.

It would have been obvious to one of ordinary skill in the art to combine the teachings of Jampani et al. to exemplify and specifically

teach each of the claimed components because each of the components are taught and required in a single composition.

See page 3 of the Office Action.

As discussed above, Jampani et al. does not teach the use of extracts from the plants now specified in claims 1-5 and 7-22, as amended. Accordingly, applicant submits that the Office Action does not set forth a *prima facie* case for obviousness of claims 1-5 and 7-22, as amended, over Jampani et al. since Jampani et al. completely lacks a teaching of one element of these claims, as amended.

Claims 1-3, 6, 9-10, 13, 16-22 were rejected under 35 U.S.C. §103(a) as being unpatentable over Grollier et al. Specifically, the Examiner stated:

Grollier et al. teach a cosmetic composition for skin and hair comprising flowers or flower tops such as buttercup from the Ranunculus family (col. 3, line 24); essential oils (col. 4, lines 24-28); and surfactants such as anionic surfactant including soap (col. 4, lines 45-50).

Grollier et al. lacks an example that specifically teaches each of the claimed components.

It would have been obvious to one of ordinary skill in the art to combine the teaching of Grollier et al. to exemplify and specifically teach each of the claimed components because each of the components are taught and required in a single composition.

See page 4 of the Office Action.

Applicant respectfully submits that claims 1-3, 6, 9-10, 13, 16-22 are not obvious over Grollier et al. As discussed above, Grollier et al. teaches a cosmetic composition in an aqueous medium comprising particles of pulverized flowers or flower tops and a cohesion agent to maintain the homogeneity of the composition. Grollier et al. does not teach the use of extracts, nor does Grollier et al. contain any indication that extracts of any of the presently claimed plants would be expected to have anti-microbial activity. Rather, Grollier et al. makes it clear that it is important to employ finely ground flowers or flower tops in the composition of Grollier et al. to achieve the desired result. See e.g. col. 1, lines 25-47 of Grollier et al. Accordingly, since Grollier et al. does not teach or suggest the use of a plant extract, Applicant respectfully requests that the rejection under 35 U.S.C. § 103(a) be withdrawn upon reconsideration.

Claim 23 has been rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,939,050 issued to Iyer et al. (hereinafter "Iyer et al."). Specifically the Examiner stated:

Llyer [sic] et al. disclose an antimicrobial composition that may be in the form of a wipe (col. 7, lines 16-20) comprising an antimicrobial agent comprising an extract from Hydrastis Canadensis (col. 4, lines 1-2); surfactants (col. 7, lines 47-49); and essential oils (col. 5, lines 55-63). Iyer et al. lack an example that specifically teaches each of the claimed components.

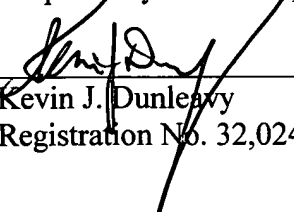
It would have been obvious to one of ordinary skill in the art to combine the teachings of Iyer et al. to exemplify and specifically teach each of the claimed components because each of the components are taught and required in a single composition.

See pages 4-5 of the Office Action.

Iyer et al. does not teach the use of extracts of the plants now required by claim 23, as amended. Because Iyer et al. does not set forth every element of claim 23, as amended, amended claim 23 is not obvious over Iyer et al., taken alone. Moreover, there is no teaching or suggestion to motivate a skilled person to substitute an extract of a plant as now claimed in claim 23, into the composition of Iyer et al. Accordingly, Applicant respectfully requests that the rejection under 35 U.S.C. § 103(a) be withdrawn upon reconsideration.

In view of the foregoing amendments and remarks, Applicant respectfully submits that all of the claims are in condition for allowance and respectfully requests favorable Office Action so indicating.

Respectfully submitted,

  
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